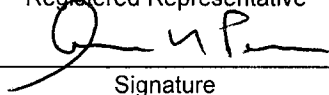


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Registered Representative



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April 7, 2009
Date of Signature

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Appln. of: Masahiro Kaiwa
Appln. No.: 10/070,331
Filed: February 26, 2002
For: METHOD AND APPARATUS FOR
SUPPORTING LOCATION
INFORMATION SERVICE

Examiner: Duran, Arthur D.
Art Unit: 3622
Confirmation No.: 7057

Attorney Docket No: 9683/103

Mail Stop Appeal Brief - Patents
Commissioner for Patents
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Alexandria, VA 22313-1450

REPLY BRIEF

Dear Sir:

This Reply is in response to the Examiner's Answer mailed February 9, 2009.

I. STATUS OF THE CLAIMS

1. Claims 12-13 and 21 are cancelled.
2. Claims 1-11, 14-20, and 22-28 are pending and stand finally rejected.
3. Claims 1-11, 14-20, and 22-28 are appealed.

II. REPLY SUMMARY

In this Reply, Appellant asserts the following:

1. The Examiner improperly asserts an inherency argument.
2. Even if the inherency argument is accepted, the prior art still fails to teach the limitations as claimed

III. ARGUMENTS

A. Claim 1

In support of the rejection of claim 1, the Examiner states the following:

In interpreting claim language, the broadest reasonable meaning of the words in their ordinary usage as they would be understood by one of ordinary skill in the art is applied, taking into account whatever enlightenment by way of definitions or otherwise that may be afforded by the written description.

* * *

the claims have been interpreted that if a mobile device has GPS it can inform the central server that the mobile device has GPS. The central server can then use the GPS information to calculate a GPS only based location for the mobile device or the central server can use the GPS information to calculate a DGPS (Differential GPS) based location for the mobile device.

1. The Examiner improperly asserts an inherency argument.

The Examiner misapplies the law in a misguided attempt at an inherency argument. Specifically, the Examiner states that, according to case law, the terms “mobile device” and “GPS” must be given their “broadest reasonable meaning”. Given the “broadest reasonable meaning,” the terms “mobile device” and “GPS” must mean:

(1) the mobile device “can inform the central server that the mobile device has GPS”; and

(2) the “central server can then use the GPS information to calculate a GPS only based location for the mobile device or the central server can use the GPS information to calculate a DGPS (Differential GPS) based location for the mobile device.”

The Examiner is not applying the “broadest reasonable meaning”. There is no dispute as to the reasonable breadth of the terms “mobile device” or “GPS”.

Instead, the Examiner is merely asserting an inherency argument. The Examiner, with no support, states that a “mobile device” with “GPS” would inform the server of its GPS capability and that the server would use the GPS to calculate the location of the mobile device. Apart from the error in logic (discussed below), there is no basis for the Examiner’s assumption as to inherently what a “mobile device” with “GPS” could do.

Moreover, there are several glaring flaws in the Examiner’s argument as to what the “mobile device” and the server “can” do. First, the Examiner merely proffers what the “mobile device” and server “can” do – not what the “mobile device” and server “did” at the time of the invention. Second, the Examiner reasons that because the “mobile device” has “GPS,” both the “mobile device” and the server have additional functionality. Appellant disagrees with the entire

line of reasoning. Appellant more specifically questions how additional functionality in the mobile device (by including GPS) necessarily creates additional functionality at the server. Put another way, the Examiner asserts that because the “mobile device” has “GPS”, the server “can” use the GPS information to calculate a GPS only based location or use the GPS information to calculate a DGPS. Where is the basis for this assertion? Even if the mobile device did send inform the server of its GPS capability (which Appellant disputes), why does it necessarily follow that the server would use the GPS information in order to decide how to calculate the location using one of a variety of methods? In point of fact, the Examiner’s list of what the devices “can” do is nothing more than improper hindsight and should be rejected.

2. The Examiner’s inherent teachings of the prior art are nonsensical.

The Examiner asserts that a mobile device with GPS would inform the server of its GPS capability and that “the central server can then use the GPS information to calculate a GPS only based location for the mobile device.” This is inconsistent on its face. Why would a server “calculate” the location of the mobile device using only GPS if the location has already been determined using only GPS by the mobile device? Put another way, the Examiner admits that the mobile device has already calculated the location of the mobile device using GPS. Yet, the Examiner asserts that if the mobile device has GPS, it would be inherent for the mobile device to send this GPS information to the server – and for the server to perform the exact calculation that the mobile device just made – namely, for the server to calculate the location of the mobile device using the

GPS. This is nonsensical. Apart from the lack of any support for the Examiner's inherency argument, why would a server perform the exact calculation that the mobile device just performed?

The Examiner further asserts that Treyz supports the inherency argument, stating the following:

in Treyz, the handheld device provides GPS location information. Then, the GPS information may or may not be corrected via DGPS. The DGPS correction utilizes the GPS information and can occur at a variety of locations or "performed elsewhere". The DGPS corrected location is then sent back to the handheld device.

Even under the Examiner's analysis, it is clear that Treyz fails to disclose or suggest a centralized device that selects a locating method from a plurality of locating methods. In Treyz, the "performed elsewhere" device has one and only one option for locating – Differential GPS. There is no other method that is taught or suggested of any centrally located device to perform. The only alternative locating method in Treyz is ordinary GPS; however, this locating method is only available at the handheld computing device 12. Therefore, it is clear that Treyz does not teach any centralized locating device (such as a "location information service supporting gateway" as claimed in claim 1) that selects the locating method from a plurality of locating methods. Because the Examiner relies on an improper inherency/hindsight argument, Appellant requests the rejection of claim 1 be reversed.

B. Claim 15

Claim 15 recites "wherein the location information service supporting gateway carries out the location information obtaining service and the location

information sending service on schedule determined in advance.” In support of the rejection of claim 15, the Examiner states:

“Stewart discloses the gateway performing actions periodically or on a schedule in advance:

‘In another embodiment, a wireless AP 120 may send out a signal periodically that is recognizable by PCD 110, e.g., PDAs, laptop computers, or other mobile user devices. This signal may inform the PCD 110 that a wireless AP 120 is near and offer the MU [mobile user] using that PCD 110 access to the system. (11:60-65)”

(Emphasis in original). The Examiner’s reasoning is faulty for several reasons.

First, the wireless access point (AP) 120 does not relate to any central server, instead being hardware in the field at which the mobile user can access. This is clearly shown in Figure 1A of Stewart (reproduced below):

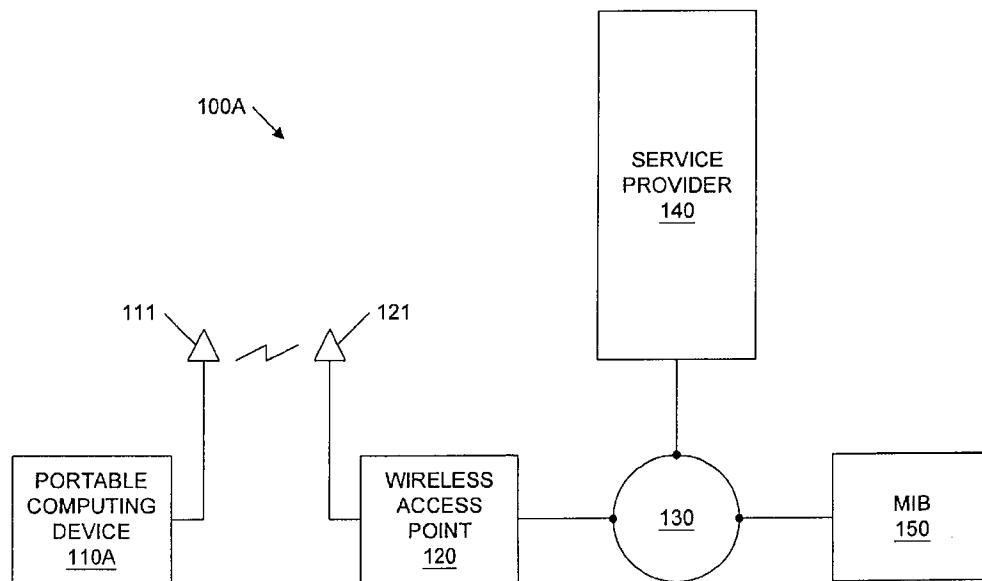


FIG. 1A

Second, the periodic signal is sent from the wireless access point (AP) 120 to the portable computing device (PCD) 110A - in effect providing information from the network to the mobile user – instead of providing any “location information obtaining service” that would receive information about the mobile device as

recited in claim 15. Third, the periodic signal relied on by the Examiner does not relate to any determination of location of the user – instead only being a signal to indicate to the portable computing device (PCD) 110A that a wireless access point (AP) 120 is nearby. Because the Examiner's reliance on Stewart for this teaching is misplaced, Appellant requests that the rejection of claim 15 be reversed.

C. Claim 17

Claim 17 recites "wherein, in the location information sending service, the location information service supporting gateway checks the reaching of location information to a destination and sends an arrival notification to a mobile device of the locating target person." In support of the rejection of claim 17, the Examiner states the following:

Stewart discloses sending the user a message based on the user's particular location (Figure 6; and below citations [sic])

The Examiner then provides several citations to the user receiving messages. Appellant does not dispute that Stewart teaches sending a message to the user. Appellant does dispute that Stewart teaches or suggests notifying the mobile device that the location information was sent to a destination, as recited in claim 17. The user of the mobile device may not wish, for privacy purposes, to have the location information be sent to the destination of a third party. As recited, claim 17 notifies the user in order for the user to be aware that the user's location is being sent to a third party. Stewart does not even contemplate the problem presented (a user's privacy) or contemplate the solution (notification of the user). Therefore, the Examiner's reliance on Stewart for this teaching is misplaced.

The Examiner further relies on Treyz stating: "Treyz discloses sending a message or alert when the user reaches particular destinations". Again, this is entirely inapposite to the recited limitation. Thus, for at least the reasons cited, Appellant requests that the rejection of claim 17 be reversed.

D. Claim 18

In support of the rejection of claim 18, the Examiner refers to the arguments provided for claim 1. As discussed above, the Examiner improperly relies on inherency to teach that a mobile device with GPS would inform the server of its GPS capability and that the server would use the GPS to calculate the location of the mobile device. Therefore, for at least the reasons cited above, Appellant requests that the rejection of claim 18 be reversed.

E. Claim 23

Claim 23 recites

"wherein the location information service supporting gateway determines a type of mobile device based on the information received from the mobile device"; and

"wherein the location information service supporting gateway selects the locating method based on the determined type of mobile device."

In support of the rejection of claim 23, the Examiner states the following:

the prior art renders obvious different mobile device types and using a locating method that works with the appropriate mobile device type.

Stewart discloses a variety of types of mobile device:

* * *

And, Stewart discloses different devices can have different locating methods based on device types:

* * *

In this citation preceding, Stewart discloses that cellular phones use one form of locating method. Hence, the mobile device type of cellular phone is known to use a cellular phone type locating system.

Also, Treyz discloses a variety of locating methods and that certain locating methods work with certain mobile device technology types:

* * *

Hence, the prior art discloses utilizing a variety of different mobile device types. And, the prior art discloses that different mobile device types utilize different locating methods or different communication protocols. Hence, the communication protocol used by the mobile device is an indicator to what type of mobile device it is. And, the prior art renders obvious that the central service chooses a locating method that corresponds with the communication/locating protocol available to the different mobile devices.

Hence, the prior art renders it obvious different mobile device types and using a locating method that works with the appropriate mobile device type.

Thus, the Examiner reasons that: (1) different mobile device types utilize different communication protocols; (2) the communication protocol is “an indicator to what type of mobile device it is”; and (3) the server “chooses a locating method that corresponds with the communication/locating protocol”.

The Examiner’s reasoning is flawed in several respects. First, the communication protocol is not necessarily an indicator of the locating ability of the mobile device. In other words, a particular communication protocol does not necessarily determine whether a mobile device has GPS. Second, there is no teaching or even a suggestion that the communication protocol is used by the server to determine the type of device (and then the locating ability) based on the communication protocol. Even if one were to assume that there is a direct correlation between communication protocol and locating ability, there is no teaching in any of the cited references that the server uses the communication

protocol to choose the locating method. Again, the Examiner is merely exercising improper hindsight. For at least the reasons cited, Appellant requests the rejection of claim 23 be reversed.

F. Claim 26

Claim 26 recites

“wherein the location information obtaining means determines a type of mobile device based on the information received from the mobile device”; and

“wherein the location information obtaining means selects the locating method based on the determined type of mobile device.”

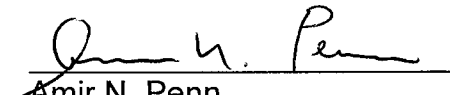
The Examiner relies on the same argument in rejecting claim 23 when rejecting claim 26. As discussed above, the Examiner is merely using improper hindsight. For at least this reason, Appellant requests the rejection of claim 26 be reversed.

IV. CONCLUSION

Appellant respectfully submits that the inventions defined in claims 1-11, 14-20, and 22-28 are patentable in view of any combination of the cited references. Appellant therefore requests reversal of all of the pending rejections asserted in the Final Office Action.

Respectfully submitted,

Dated: April 7, 2009


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